

## **REMARKS/ARGUMENTS**

### ***Status of the Claims***

Claims 1 and 4-6 were last examined. Claims 7-12 are withdrawn from consideration. Claims 2, 3, and 13-16 are canceled. Claim 1 is amended to replace the transitional phrase “consists essentially of” with “consists of” with reference to the composition of the nucleic acid probes of the array. Claim 5 has been amended to replace the transitional phrase “consist essentially of” with “consist of” with reference to the probes on a bead. Applicants assert that no new matter is presented by this amendment and respectfully request entry of the same.

### ***Specification***

In paragraph 1, the Examiner notes a discrepancy between the SEQ ID Nos: in the replacement paragraph beginning on page 25, line 4 and the SEQ ID Nos: in other parts of the specification. The replacement paragraph contains a typographical error. The number 688,466 is incorrect and should be 699,466. Applicants have amended the paragraph herein to correct this error and thank the Examiner for bringing this to Applicants’ attention.

### ***Rejections under 35 U.S.C. § 112 should be withdrawn.***

In paragraph 4, the rejection of claims 1 and 4-6 under 35 U.S.C. § 112 is maintained because of the use of the term “consists essentially of”. The Examiner indicates that the limitation in the claim that the probes consist essentially of one of the sequences in the sequence listing allows for the addition of unspecified nucleotides to any probe. Claim 1 has been amended to replace the transitional phrase “consists essentially of” with “consists of” in reference to the composition of the nucleic acid probes of the array. In view of the amendment Applicants respectfully request withdrawal of this rejection.

***Rejections under 35 U.S.C. § 102 should be withdrawn.***

In paragraph 7, claims 1, 4, and 6 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Gunther et al. (1985). This rejection is maintained from the previous Office Action. Gunther et al. teaches a Southern blot of rat genomic DNA and is cited as containing probes containing the entire rat genome as a collection of restriction fragments.

Applicants previously argued that the presently claimed array differs from the teaching of Gunther et al. at least in the requirement that the probes are all 25 bases and each sequence is a separate probe. In response, the Examiner has indicated that, because of the language “consists essentially of” in claim 1, the probes are not limited to only the 25-mer sequences listed in the sequence listing. Applicants have amended claim 1 to replace the transitional phrase “consists essentially of” with “consists of” in reference to the composition of the nucleic acid probes of the array. In view of this amendment Applicants request withdrawal of this rejection.

***Rejections under 35 U.S.C. § 103 should be withdrawn.***

In paragraph 9, the rejection of claims 1 and 4-6, under 35 U.S.C. 103(a) over Rat UniGene Build 99 Set (Jun 2002) in view of Fodor et al. (IDS: U.S. Patent No. 6,309,822) is maintained. The Unigene database is cited as teaching the sequences of rat genes and ESTs and, as indicated in the specification, the claimed probe sequences are complementary to genes and EST clusters from this build of the database. Fodor et al. is cited as teaching that arrays may comprise up to 1,000,000 different oligonucleotide probes that are preferably 20 to 25 nucleotides in length.

In the previous response Applicants argued that the 699,466 probes selected for inclusion in the array form a unique set of probes that were carefully selected to function as a

set on an array for gene expression analysis. The Examiner's response to this argument is that the claims are drawn to an array comprising probes that are not limited to only the 25-mer sequences listed in the sequence listing because of the use of "consisting essentially of". As indicated above, claim 1 has been amended to replace "consisting essentially of" with "consisting". In view of this amendment Applicants request withdrawal of this rejection.

### **CONCLUSION**

For these reasons, Applicants believe all pending claims are now in condition for allowance. If the Examiner has any questions pertaining to this application or feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at (408) 731-5768.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No.01-0431. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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